

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

KD, a minor, by his parent and natural  
guardian, Kenneth Dieffenbach, and  
KENNETH DIEFFENBACH, in his  
own right

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Civil Action No. 07-515-\*\*\*

**UNITED STATES' MOTION TO DISMISS OR IN  
THE ALTERNATIVE, FOR SUMMARY JUDGMENT**

The United States, by and through undersigned counsel, hereby respectfully moves the court to dismiss the Complaint in this matter or, in the alternative, to grant summary judgment in favor of the United States, and in support thereof, avers as follows:

1. The Complaint is filed pursuant to the Federal Tort Claims Act, 28 U.S.C. 2671 *et seq.* ("FTCA").
2. The FTCA is a limited waiver of sovereign immunity, which must be strictly construed. *United States v. Kubrick*, 444 U.S. 111 (1979)
3. Neither the adult plaintiff nor the minor plaintiff complied with the administrative prerequisites for suit, thus the Complaint must be dismissed.

4. In the alternative, if the Court considers the exhibits attached to its Opening Brief in support of this motion, the United States prays for entry of an order of summary judgment in its favor.

Respectfully submitted,

COLM F. CONNOLLY  
United States Attorney

By: /s/Patricia C. Hannigan  
Patricia C. Hannigan  
Assistant United States Attorney  
Delaware Bar I.D. No. 2145  
The Nemours Building  
1007 Orange Street, Suite 700  
P. O. Box 2046  
Wilmington, DE 19899-2046  
(302) 573-6277  
Patricia.Hannigan@usdoj.gov

Dated: December 5, 2007